

THE LAW OFFICE OF
MICHAEL J. YOUNG
9842 ROOSEVELT ROAD
WESTCHESTER, ILLINOIS 60154
TELEPHONE (708) 410-0090

January 2, 2020

The Honorable Lloyd James Brooks
Courtroom 1501
Richard J. Daley Center
50 W. Washington Street
Chicago, Illinois 60602

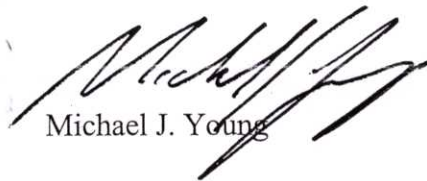
**Re: Balthaup v. The Law Office of Michael J. Young, et al.
Case No. 2019 L 004480**

Dear Judge Brooks:

Please find enclosed a courtesy copy of "Defendants' 2-615 and 2-619 Motion to Dismiss Plaintiff's Amended Complaint."

This matter is scheduled before your Honor on January 14, 2020 at 10:30 a.m.

Respectfully submitted,



Michael J. Young

cc: T. Balthaup w/o Enclosures

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

TED E. C. BULTHAUP, III,)
)
Plaintiff,)
)
vs.) No. 2019 L 004480
)
THE LAW OFFICE OF MICHAEL YOUNG,)
and MICHAEL YOUNG,)
)
Defendants.)

CERTIFICATE OF SERVICE

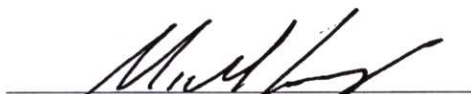
I certify that copies of the following documents:

1. CERTIFICATE OF SERVICE;
2. NOTICE OF MOTION (SET FOR JANUARY 14, 2020 AT 10:30 A.M.);
3. DEFENDANTS' 2-615 AND 2-619 MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT.

I further certify that copies of the above documents were sent with sufficient postage affixed with the use of the U.S. Postal Service, depositing envelope in the U.S. postal box located at 10240 Roosevelt Road, Westchester, Illinois 60154, on January 2, 2020 at 5:00p.m., to:

Ted E.C. Bulthaup III
144 South Pinecrest
Bolingbrook, Illinois 60440

January 2, 2020


Michael J. Young (#32510)
Law Office of Michael J Young
9842 Roosevelt Road
Westchester, Illinois 60154
(708) 410-0090

FILED
12/30/2019 2:47 PM
DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
20191004480

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

TED E. C. BULTHAUP, III,)
)
Plaintiff,)
)
vs.)
)
THE LAW OFFICE OF MICHAEL YOUNG,)
and MICHAEL YOUNG,)
)
Defendants.)

Hearing Date: 1/14/2020 10:30 AM - 10:30 AM

No. 2019 L 004480

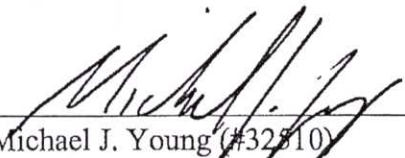
NOTICE OF MOTION

TO: Ted E.C. Bulthaup III
144 South Pinecrest
Bolingbrook, Illinois 60440

On Tuesday, January 14, 2020 at 10:30 a.m. or soon thereafter as Defendants' may be heard, I shall appear before the Honorable Judge Lloyd James Brooks or any judge sitting in his stead in Room 1501 at the location of 50 W. Washington Street, Chicago, Illinois 60602 and present the attached "*Defendants' 2-615 and 2-619 Motion to Dismiss Plaintiff's Amended Complaint.*"

Respectfully Submitted,

December 30, 2019



Michael J. Young (#32510)
Law Office of Michael J Young
9842 Roosevelt Road
Westchester, Illinois 60154
(708) 410-0090

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

FILED
12/2/2019 9:10 AM
DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
20191004480

TED E.C. BULTHAUP, III,)
)
Plaintiff,)
)
vs.) No. 2019 L 004480
)
THE LAW OFFICE OF MICHAEL YOUNG,)
and MICHAEL YOUNG,)
)
Defendants.)

7549275

**DEFENDANTS' 2-615 AND 2-619
MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT**

NOW COME the Defendants, by and through their attorney, Law Office of Michael J. Young, and pursuant to 735 ILCS 5/2-615 and 735 ILCS 5/2-519, for an entry of an order dismissing Plaintiff's Amended Complaint with prejudice. In support, Defendants state as follows:

FACTUAL BACKGROUND

In this action, Plaintiff brings suit against his former criminal defense attorney and his law firm alleging legal malpractice.

Plaintiff, Edwin Charles Bulthaup, III, (Plaintiff names himself in this Complaint as "Ted E.C. Bulthaup, III"), was initially charged in DuPage County with 112 felony counts involving financial institution fraud and sales tax evasion. During the period of representation (1 ½ years), Plaintiff, Mr. Bulthaup, reviewed all the discovery materials tendered and ultimately an agreement was reached with the Illinois Attorney General

that in exchange for Mr. Bulthaup's plea of guilty on two counts, the remaining 110 felony counts would be dismissed.

On July 6, 2016, Plaintiff, Mr. Bulthaup, voluntarily entered the negotiated guilty pleas on the charges of financial institution fraud and sales tax evasion. (See July 6, 2016 transcript, page 16, attached and marked as "Exhibit 1"). Plaintiff was sentenced on November 10, 2016. (Judgments attached and marked as "Exhibit 2" and "Exhibit 3" and excerpts from the November 10, 2016 sentencing are attached and marked as "Exhibit 4".)

At the July proceeding, the Court queried Mr. Bulthaup as to whether it was his "intention to enter pleas of guilty to the two charges," to which he responded in the affirmative. (Transcript of July 6, 2016, Page 16, attached and marked as "Exhibit 1").

Mr. Bulthaup has not alleged nor can he show that since the date of Plaintiff's guilty pleas and entry of judgments these criminal convictions have been overturned, reversed, or vacated. (See attached Judgments of convictions, "Exhibit 2" and "Exhibit 3"). Likewise, Plaintiff has never even filed an ineffective assistance of counsel motion against his prior counsel.

2-615 Motion to Dismiss Plaintiff's Amended Complaint

STANDARD OF REVIEW

When considering the trial court's ruling on a motion to dismiss, the reviewing court must determine whether the allegations of the complaint, when interpreted in a light most favorable to the plaintiff, sufficiently set forth a cause of action upon which relief may be granted. *R & B Kapital, LLC.*, 358 Ill.App.ed at 920, 295 Ill. Dec. 95, 832 N.E. 2d 246 (quoting *Carroll v. Faust*, 311 Ill.App.3d 679, 684, 244 Ill.Dec. 291, 725 N.E.2d 764 (2000)). Under 735 ILCS 5/2-615, a motion to dismiss should be granted only if it is apparent that the plaintiff cannot prove any set of facts, under any circumstances, that would entitle plaintiff to recover. *Cowper v. Nyberg*, 2015 IL 117811, 28 N.E.3d 768; *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006); *Wolf v. Bueser*, 279 Ill.App.3d 217, 222, 664 N.E.2d 197; see also, *Borowiec*, 208 Ill.2d at 382, 808 N.E.2d 957 (citing *Bryson v. News America Publications Inc.*, 174 Ill.2d 77, 672 N.E.2d 1207).

To state a claim for legal malpractice under Illinois law a plaintiff must allege the following elements: (1) the existence of an attorney-client relationship, (2) a duty arising from that relationship, (3) a breach of that duty, (4) proximate cause of an injury, and (5) actual damages. *Moore v. Owens*, 698 N.E.2d 707, 709 (Ill. App. Ct. 1998) (citing *Wissore v. Alley*, 562 N.E. 978 (Ill. App. Ct. 1990)).

In addition, to bring a legal malpractice action against a former criminal defense attorney, the plaintiff must also fulfill a sixth element, actual innocence. *Moore*, (citing *Levine v. Kling*, 123 F.3d 580 (7th Cir. 1997)); *Kramer v. Dirksen*, 695 N.E.2d 1288 (Ill. App. Ct. 1998). The plaintiff must prove his innocence of all underlying charged crimes for which defense counsel represented him. *Id.* Furthermore, it requires that the "Now-Plaintiff" prove that the "Then-Defendant" would be free from liability not only for his crimes of conviction, but also for any related offenses." *People v. Barnslater*, 869 N.E.2d 293 (2007).

Plaintiffs are collaterally estopped from arguing actual innocence until they secure post-conviction relief that overturns or invalidates the criminal conviction. *Moore; Levine; Kramer.*

Plaintiff argues that his case falls under an exception to the actual innocence rule, alleging that Defendant's conduct amounted to "betrayal." *Morris v. Margulis*, 718 N.E. 2d 709 (Ill. App. Ct. 1999). This exceptions is cited in the plaintiff's second cause of action, for breach of fiduciary duties.

ANALYSIS

I. PLAINTIFF MUST DEMONSTRATE ACTUAL INNOCENCE, AS HIS LEGAL MALPRACTICE CLAIM AGAINST HIS FORMER CRIMINAL DEFENSE COUNSEL DOES NOT FALL UNDER THE *MORRIS* EXCEPTION.

In *Morris v. Margulis*, the plaintiff alleged that his former attorneys committed legal malpractice when they drafted a list of questions federal prosecutors should ask

the plaintiff when he took the stand as a defendant in a criminal trial. *Id.* at 715. These questions were based on communications that took place between the plaintiff and the attorneys. *Id.* These lawyers were not representing the plaintiff in the criminal trial, but, because they had represented the plaintiff in past legal matters, the parties disputed whether there was still an ongoing attorney-client relationship. *Id.* at 712-715. The trial court granted summary judgment in favor of the defendants, and the plaintiff appealed that dismissal on several different grounds. *Id.* at 712. The Court of Appeals reversed the trial court's dismissal of the plaintiff's legal malpractice claim and remanded the case. *Id.* While not deciding if an attorney-client relationship existed, the Court held that if one existed, the plaintiff would not need to demonstrate actual innocence. *Id.* at 720-721. The Court's reasoning was that if a client's attorney "betrayed" them by doing something as severe as divulging confidential information and actively assisting in the prosecution of their client, it would be unfair to insist that the plaintiff demonstrate their actual innocence. *Id.*

The Plaintiff's Amended Complaint mischaracterizes the *Morris* holding. The case created an extremely narrow exception to the rule that Plaintiffs must demonstrate their actual innocence when bringing a legal malpractice claim against their former criminal defense counsel. There is no record of any court applying the *Morris* exception by allowing a plaintiff who is collaterally estopped from alleging their actual innocence to sidestep the element entirely. The only courts that have cited *Morris*, with respect to

this particular holding, have done so to distinguish it from the case they were deciding. In the aftermath of *Morris*, both the Illinois Court of Appeals and the Seventh Circuit Federal Court of Appeals continued to require plaintiffs to demonstrate actual innocence. *Paulsen v. Cochran*, 826 N.E.2d 526 (Ill App. Ct. 2005) (citing *Griffin v. Goldenhersh*, 752 N.E.2d 1232 (Ill. App. Ct. 2001) and *Woidtke v. St. Clair County*, 335 F.3d 558, 562 (7th Cir. 2003)). Instead of broadening the *Morris* exception, courts extended the actual innocence rule, holding that it applied to all claims of legal malpractice against former criminal defense counsel, even if the plaintiff does not allege that their conviction was the result of the alleged malpractice. *Paulsen; Herrera-Corral v. Hyman*, 948 N.E.2d 242 (Ill. App. Ct. 2011). The reality of the *Morris* exception is that it had no meaningful impact on future legal malpractice litigation. It is a lightly reasoned, two-paragraph rule from a twenty-year-old Illinois Court of Appeals case that the Illinois Supreme Court did not address in their reversal of the appellate court's ruling. *Morris v. Margulis*, 197 Ill. 2d 28 (Ill. 2001).

If Plaintiff's claim does not fall under the *Morris* exception, then he must allege his actual innocence. While Plaintiff's Amended Complaint contains some entirely unsubstantiated claims of innocence, the Court is not required to view these claims in the light most favorable to the Plaintiff. Plaintiff has yet to secure post-conviction relief overturning or vacating his convictions, nor has he even attempted to secure such relief. While the plaintiff is still considered guilty of the crimes he was accused of in the eyes

of the law, he is collaterally estopped from arguing his actual innocence. Because the Plaintiff cannot plead or prove his innocence of financial institution fraud, sales tax evasion, or any of the other 110 related offenses, he should be barred from bringing any legal malpractice claims. Furthermore, the Plaintiff makes no mention of *Morris* in their first cause of action for legal malpractice. Plaintiff only mentions *Morris* in their second cause of action, and it is unclear whether the act of "betrayal" applies to the entire cause of action, or just the allegations surrounding the plea agreement.

WHEREFORE, the Defendants' respectfully request this Honorable Court:

A. Dismiss Plaintiff's Bulthaup's cause of action in its entirety, with prejudice, as his complaint is legally insufficient, fatally flawed and cannot under any set of facts or under any circumstances state a viable cause of action.

B. Dismiss Plaintiff's complaint in its entirety, with prejudice, without allowing Plaintiff leave to amend his complaint as it would be futile, as all his claims are based on his underlying criminal convictions, which have not been overturned and of which he cannot plead or prove his innocence.

2-619 Motion to Dismiss Plaintiff's Amended Complaint

In the alternative, the Defendants also bring this 2-619 motion for involuntary dismissal, on the basis that the causes of action in Plaintiff's Amended Complaint were filed outside the statute of limitations.

STANDARD OF REVIEW

Section 2-619 enumerates various grounds for involuntary dismissal. A 2-619 motion "admits the legal sufficiency of the complaint but asserts affirmative matters to avoid or defeat the claim." *Lamar Whiteco Outdoor Corp. v. City of W. Chi.*, 355 Ill. App. 3d 352, 359 (2d Dist. 2005). A complaint may be dismissed if the plaintiff fails to file within the statute of limitations. ILCS 5/2-619(a)(5).

The statute of limitations for a cause of action does not begin to accrue until the plaintiff can fulfill all the required elements of that cause of action. *Griffin*, at 1238. (citing *Kohler v. Woollen, Brown & Hawkins*, 304 N.E.2d 677, 681 (1973)). In the context of legal malpractice claims against a plaintiff's former criminal defense lawyer, this usually means the statute of limitations does not begin to run until the plaintiff secures post-conviction relief. *Griffin*, at 1240. Before having their conviction overturned, they are collaterally estopped from arguing their actual innocence, and they cannot fulfill the sixth element of the cause of action. *Id.* at 1239. Once they secure the necessary post-conviction relief and are no longer precluded from professing their actual innocence, they can assert a legal malpractice claim with all six required elements. It is at this

moment that their cause of action for legal malpractice accrues, and the statute of limitations begins to run.

ANALYSIS

I. IF PLAINTIFF'S LEGAL MALPRACTICE CLAIM AGAINST HIS FORMER CRIMINAL DEFENSE COUNSEL FALLS UNDER THE MORRIS EXCEPTION AND PLAINTIFF NEED NOT DEMONSTRATE ACTUAL INNOCENCE, THEN PLAINTIFF'S CLAIM IS TIME BARRED BY THE STATUTE OF LIMITATIONS.

The Plaintiff cites *Morris* in the second cause of action in his amended complaint. It is unclear whether Plaintiff alleges that the exception only applies to this particular cause of action, or if the Plaintiff alleges that the exception applies to both causes of action contained in the amended complaint.

Any cause of action that Plaintiff alleges falls under the *Morris* exception is time barred by the statute of limitations for legal malpractice claims. The Plaintiff cites *Morris*, alleging that the Defendant's legal malpractice amounted to a "betrayal," and arguing that the Plaintiff is not required to demonstrate actual innocence. If the Plaintiff's claim falls under this exception, then their legal malpractice cause of action is only required to have the first five elements: (1) the existence of an attorney-client relationship, (2) a duty arising from that relationship, (3) a breach of that duty, (4) proximate cause of an injury, and (5) actual damages. *Id.* at 1238 (citing *Land v. Auler*, 542 N.E.2d 509, 511 (1989)).

Following this line of reasoning, the Plaintiff's claim would more closely resemble legal malpractice claims that stem from representation in civil matters. As with all other causes of action, the statute of limitations begins to run when the cause of action accrues. In legal malpractice claims stemming from civil representation the cause of action accrues when the plaintiff becomes aware of, or should be aware of, all the underlying facts supporting their legal malpractice claim. *Id.* at 1238 (*citing Kohler*).

According to Plaintiff's Amended Complaint, the Plaintiff become aware of Defendants' alleged "betrayal" on the date of his conviction, July 6, 2016. At this point in time the Plaintiff is aware of all the facts necessary to fulfill the five elements of his legal malpractice claim. Therefore, the cause of action accrued, and the statute of limitations began to run.

The statute of limitations for a legal malpractice claim in Illinois is two years. 735 ILCS 5/13-214.3. This means the Plaintiff had until July 6, 2018 to assert his second cause of action. The Plaintiff did not file his complaint until April 26, 2019, and this claim should be time barred by the statute of limitations.

Plaintiff's Amended Complaint contains two causes of action. As written, it is entirely unclear whether Plaintiff believes the *Morris* exception applies to both causes of action, just the second cause of action, or just the portion of the second cause of action stemming the plea agreement. Other portions of Plaintiff's Amended Complaint relate

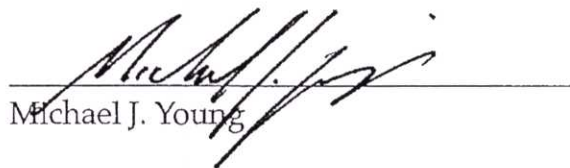
to Plaintiff's probationary interview, sentencing hearing, and post-sentence communications with the Defendant.

According to the Plaintiff's Amended Complaint, the Plaintiff was aware of all the underlying facts relating to Defendants' alleged misconduct during the probationary interview and sentencing hearing on the date Plaintiff was sentenced, at the latest. Plaintiff was sentenced on November 10, 2016, meaning the two-year statute of limitations for that portion of the claim expired on November 10, 2018. Plaintiff did not file his first complaint in this matter until April 26, 2019.

WHEREFORE, the Defendants' respectfully request this Honorable Court:

A. Dismiss every portion of Plaintiff's Bulthaup's cause of action that is time barred by the statute of limitations for legal malpractice.

Respectfully Submitted,


Michael J. Young

Michael J. Young
Atty No.: 32510
Law Office of Michael J. Young
9842 Roosevelt Road
Westchester, Illinois 60154
(708) 410-0090

1 THE CLERK: Ed Bulthaup.

2 MR. YOUNG: Good morning, your Honor.

3 THE COURT: Good morning.

4 MR. YOUNG: Your Honor, my name is Michael
5 Young, Y-o-u-n-g. My client, Mr. Bulthaup, is to my
6 side.

7 MS. TALBOTT: Good morning, your Honor.
8 Sandra Talbott for the Illinois Attorney General's
9 Office on behalf of Ansh Vaidya.

10 MS. NICHOLSON: And also on behalf of the
11 Illinois Attorney General's Office, Claire Nicholson,
12 N-i-c-h-o-l-s-o-n. Good morning, Judge.

13 THE COURT: Good morning.

14 MS. TALBOTT: Your Honor, I believe that we have
15 reached a plea in this case. We are amending two
16 counts of the indictment. Defense counsel has seen
17 the amendments and agrees to them. He is waiving any
18 formal defect or re-presentment to the Grand Jury for
19 these two counts. We have actually typed them up in
20 separate documents for the Court.

21 THE COURT: Is this on each case?

22 MS. TALBOTT: Yes, your Honor. So there will be
23 a Class 2 plea on the case ending in 66 and a Class 1
24 plea on the case ending in 65.

1 THE COURT: Okay.

2 MR. YOUNG: Your Honor, if I may, prior to that,
3 there is a -- there is a preliminary matter that we
4 would like to have an issues conference with your
5 Honor as to the bond. Can we do that now? That was
6 foreseen that we were going to discuss the bond
7 issues once -- in advance of the plea.

8 THE COURT: Okay. What is the issue with the
9 bond?

10 MR. YOUNG: The issue on both -- currently, I
11 believe that, combined, there is 112 -- I don't know
12 if there is still 112 felony counts. I think that is
13 what it was combined between the two counts, 112
14 felony counts.

15 THE COURT: He's not pleading to all those, is
16 he?

17 MS. TALBOTT: No, just two.

18 MR. YOUNG: Just two. And the total bond that
19 is out there is \$25,000 in cash. And I would be
20 asking the Court its view on reducing that bond
21 significantly because now Mr. Bulthaup doesn't have
22 112 felony counts, he is going to have two felony
23 counts, a Class 1 and a Class 2.

24 It would be my motion to have the bond

1 reduced significantly. I know that your Honor in the
2 past has reduced Mr. Bulthaup's bond in order to give
3 me fees for investigation.

4 And then when the Class X was filed, which
5 by the way the Class X is being dismissed today.
6 When the Class X was filed, the AG's Office and I
7 agreed that reduction that you made, I never received
8 the funds from the clerk, we would just let those
9 funds stay at the clerk and I wouldn't ever receive
10 those funds.

11 But now that, arguably, 110 felony counts
12 are being dismissed, I would ask that the bond be
13 reduced significantly after the plea so as to allow
14 counsel to prepare for sentencing and release
15 Mr. Bulthaup for the purpose of obtaining a
16 presentence investigation. We're going to ask for an
17 interim date before a sentencing date.

18 And then, finally, my understanding is that
19 my motion is not objected to by the Attorney General,
20 although the Attorney General will acknowledge two
21 things. Normally, the bond issue is resolved at the
22 end --

23 THE COURT: Right.

24 MR. YOUNG: -- and normally -- and but the

1 Attorney General's Office would agree with counsel,
2 myself, that there is a significant amount of work to
3 do on this case for sentencing, and that a release of
4 funds would not be -- they would not object to. So
5 that is --

6 THE COURT: Don't you usually just fill out a
7 bond refund order at the end of it? That is today,
8 right? There is no negotiated sentence?

9 MR. YOUNG: No negotiated sentence.

10 THE COURT: So it is a blind plea --

11 MS. TALBOTT: Yes.

12 THE COURT: -- amended charges? Oh, I see.

13 MR. YOUNG: Yes, it is a blind plea. We're
14 going to ask your Honor, ultimately, for a sentencing
15 hearing after a presentence investigation.

16 THE COURT: I see.

17 MR. YOUNG: So it is that.

18 Now, also, at the end of the day, it is
19 envisioned that there will be a restitution order.
20 However, the AG's Office will not be asking for any
21 of this -- any of these funds in restitution. They
22 will be asking for a judgment against Mr. Bulthaup,
23 but not any of the bond. So they make no claim to
24 the bond. And in light of --

1 THE COURT: So the bond right now on both of
2 these is -- I reduced it to 120,000, 10 percent on
3 each case?

4 MR. YOUNG: It is 125,000 bond.

5 THE COURT: You just said 120.

6 MR. YOUNG: Oh, and then it went back up to 125.

7 THE COURT: It did?

8 MR. YOUNG: It did. It did when the Class X was
9 filed.

10 MS. TALBOTT: The superseding indictment.

11 THE COURT: So the bond has been bouncing all
12 around. Now you want it back down?

13 MR. YOUNG: Well, yeah, and, your Honor, in all
14 fairness, when you did reduce the bond from 125 to
15 120, I believed -- and you reduced the bond by
16 \$5,000. I believe you only reduced the bond by
17 \$1,000 and the clerk never sent me the \$1,000 or the
18 5,000. And, frankly, for the 1,000, I didn't really
19 go look for it. I knew it would be a hassle.

20 And when the superseding indictment came,
21 the Attorney General and I just agreed that the money
22 that I was supposed to get, let's just keep that
23 there and we'll keep the bond as it is.

24 THE COURT: So what are you asking that the

1 bonds be reduced to now?

2 MR. YOUNG: I am asking that the bonds be
3 reduced to 4,000 each.

4 THE COURT: Four?

5 MR. YOUNG: 4,000.

6 THE COURT: That is a big reduction.

7 MR. YOUNG: Perhaps. And I may misspeak -- I
8 don't want to misspeak, but we're getting rid of over
9 100 felony counts --

10 MS. TALBOTT: Your Honor, we have no --

11 MR. YOUNG: -- and a Class X.

12 MS. TALBOTT: -- strong objection to lowering
13 the bond. We do prefer -- if we leave it to the
14 Court's discretion, we do prefer that it is resolved
15 at sentencing.

16 In this case, as your Honor will hear in
17 the factual basis, there is harm to the State and
18 Federal Government of approximately \$6 million. We
19 understand that defense counsel is going to need some
20 access to some funds to prepare for the sentencing
21 hearing, but --

22 THE COURT: Why is that exactly?

23 MS. TALBOTT: Because of the length of the
24 testimony of the witnesses involved.

1 MR. YOUNG: And in all fairness, your Honor, I
2 know counsel says she doesn't have a strong
3 objection. My understanding from extensive
4 negotiations with the Attorney General, the Attorney
5 General has no objection, no objection, and my
6 understanding --

7 THE COURT: That is not what she said.

8 MR. YOUNG: Well, I know, maybe she wants to
9 correct her statement, but my understanding is that
10 after months of negotiation, the Attorney General's
11 Office has no objection. They are not endorsing,
12 they are not supporting my motion, but they are not
13 objecting to my motion.

14 MS. TALBOTT: We will leave it to the Court's
15 discretion. Our preference would be that it is
16 resolved at sentencing.

17 THE COURT: Okay. Well, I don't really like to
18 get into these discussions about money, to be honest
19 with you. It is just not my favorite thing to get
20 into here, but you're going to have to show me -- I
21 mean, you say you need funds. I mean, how do I
22 know -- what do you need? I mean, what are you
23 spending it on? Are you calling an expert? Are you
24 calling -- do you have to pay the travel expenses of

1 witnesses? What do you need the funds for?

2 MR. YOUNG: Well, your Honor --

3 THE COURT: Or is it for your fee?

4 MR. YOUNG: Well, it's -- oh, make no mistake --

5 THE COURT: That is usually resolved at the end
6 of everything.

7 MR. YOUNG: Right, and also there is another
8 aspect to this. There is another aspect. We're
9 entering into a blind plea. And part of entering
10 into a blind plea, we don't know, you know,
11 Mr. Bulthaup -- not to get into him, his history, but
12 we don't know what the sentence may be.

13 And pleading to a Class 1 and Class 2, my
14 understanding is both charges he is pleading to are
15 probationable and your Honor could give him
16 probation, or your Honor may not give him probation
17 and you could give him DuPage County Jail time or
18 send him to the Illinois Department of Corrections.

19 The Attorney General is not agreeing to a
20 402 conference and that is -- so Mr. Bulthaup is
21 walking in blind, as you will, and --

22 THE COURT: What does that have to do with the
23 bond money?

24 MR. YOUNG: Well, I think there is some

1 relevance to my client thinking that it may be -- it
2 may behoove his case or it -- if he sees that the
3 Court was holding \$25,000 of the funds with 110
4 felonies and with a Class X, surely the Court would
5 see that these charges he is pleading guilty to or
6 anticipating pleading guilty to of just simply two
7 charges would be -- the Court would see that this is
8 significantly less significant, if you will, than
9 what was previously over his head, and adjust the
10 bond accordingly.

11 THE COURT: Well, I appreciate what you're
12 saying. I am not going to do that.

13 MR. YOUNG: Okay.

14 THE COURT: I am just going to leave it as it
15 is.

16 MR. YOUNG: Okay.

17 THE COURT: I will certainly entertain at the
18 end of everything if there is some request for a bond
19 refund, you know?

20 MR. YOUNG: Okay.

21 THE COURT: But we will take a look at that, but
22 I'm not going to get into adjusting bonds at this
23 point.

24 MR. YOUNG: Your Honor, could we pass the case

1 so I can talk to my client?

2 THE COURT: Of course.

3 MR. YOUNG: Thank you.

4 MS. TALBOTT: Thank you, Judge.

5 (Whereupon, the Court attended to
6 other matters on the call, after
7 which the following proceedings were
8 had herein:)

9 THE CLERK: Ed Bulthaup.

10 MR. YOUNG: Good morning again, your Honor.

11 Michael Young.

12 MS. TALBOTT: Sandra Talbott, Claire Nicholson
13 on behalf of the State of Illinois.

14 MR. YOUNG: Mr. Bulthaup is present to my side,
15 your Honor.

16 Your Honor, pursuant to -- we are going to
17 continue forward with the disposition before your
18 Honor.

19 THE COURT: Okay.

20 MR. YOUNG: And I believe that -- I don't know
21 if the State has fully explained what the charges are
22 being dismissed.

23 THE COURT: I don't think she had a chance to
24 yet. Okay. Go ahead.

1 MS. TALBOTT: Your Honor, defendant on agreement
2 is pleading to an amended Count 1 of the case ending
3 2166, which is a Class 1 sales tax evasion over
4 \$100,000.

5 THE COURT: So 2166, amended Count 1.

6 MR. YOUNG: I don't know if you have that,
7 Judge.

8 MS. TALBOTT: I filed with the clerk the
9 document that we prepared that we would like to
10 incorporate into the indictment, if possible.

11 THE COURT: Okay. I have it. All right.

12 MS. TALBOTT: And the second charge that the
13 defendant will be pleading to today is a Class 2
14 financial institution fraud over \$10,000 on case
15 ending 2165. That is amended Count 6. Those will be
16 the two charges that defendant will be pleading to.

17 Again, defense counsel waives any formal
18 defect in the indictment, as well as re-presentment
19 to the Grand Jury.

20 THE COURT: Is that correct?

21 MR. YOUNG: That's correct.

22 THE COURT: And on 2165, I know you just told me
23 this -- oh, it is a Class 2?

24 MS. TALBOTT: Yes, your Honor.

1 THE COURT: And then 2166, it is a Class 1?

2 MS. TALBOTT: Correct.

3 THE COURT: All right. Any special range of
4 penalty or anything --

5 MS. TALBOTT: The --

6 THE COURT: -- or just standard range?

7 MS. TALBOTT: Standard range, your Honor.

8 MR. YOUNG: Which I understand both charges are
9 probationable and my client proceeds with that
10 understanding that probation may be given by this
11 Court.

12 THE COURT: Any mandatory fine range on these?

13 MS. TALBOTT: No, your Honor.

14 THE COURT: Okay.

15 MS. TALBOTT: Your Honor, the defendant in this
16 case, as you know, engaged in a large-scale tax fraud
17 scheme to defraud.

18 THE COURT: Before you get into that, let me ask
19 you, so the rest of the counts are dismissed?

20 MS. TALBOTT: Yes, your Honor.

21 THE COURT: And there is no extended term range
22 or anything on this?

23 MS. TALBOTT: No, your Honor.

24 THE COURT: Either one of these?

1 MS. TALBOTT: No, your Honor.

2 THE COURT: Okay. And there is no agreement as
3 to the sentence?

4 MS. TALBOTT: No, your Honor.

5 MR. YOUNG: There's no agreement as to the
6 sentence, your Honor. Your Honor, there is also an
7 agreement between -- aside from having all the other
8 charges dismissed, there is also an agreement between
9 the Attorney General's Office and Mr. Bulthaup that
10 Ms. Bulthaup will not be charged with these offenses.

11 My understanding is that the Attorney
12 General was going to indict Ms. Bulthaup, my client's
13 wife, and in exchange for him pleading guilty today,
14 they are not going to indict her and not going to
15 charge her. That also is part of the agreement. *

16 MS. TALBOTT: Your Honor, the State at this time
17 has no intention of indicting Ms. Bulthaup.

18 THE COURT: But is that part of the agreement
19 that she will not be?

20 MS. TALBOTT: It is not a formal agreement.

21 MR. YOUNG: Well --

22 MS. TALBOTT: We have no intention of pursuing
23 indictment against Ms. Bulthaup.

24 MR. YOUNG: Well, it needs to be part of the

1 agreement because that is a big -- that has been a
2 stick held over my client's head and negotiated for
3 months.

4 THE COURT: Hang on. Hang on. If you need more
5 time to talk to each other, that's fine. I don't
6 want to get into it at the bench, okay? So do you
7 want to make sure that everybody knows the parameters
8 of the agreement?

9 MS. TALBOTT: Your Honor, we are comfortable
10 with proceeding and Ms. Bulthaup will not be charged.

11 THE COURT: So that is part of the agreement?

12 MS. TALBOTT: Yes, your Honor.

13 THE COURT: All right.

14 Sir, are you a U.S. citizen?

15 DEFENDANT BULTHAUP: Yes.

16 THE COURT: Now, I am told you wish to enter a
17 plea of guilty on 14 CF 2165 to the charge of
18 financial institution fraud, and you wish to enter a
19 plea of guilty on 14 CF 2166 to the charge of sales
20 tax evasion, and you're doing so without any specific
21 agreement with the State about what your sentence is
22 going to be; is that correct?

23 MR. YOUNG: Could we have one moment?

24 DEFENDANT BULTHAUP: I'm sorry, your Honor.

1 THE COURT: My question was, is it your
2 intention to enter pleas of guilty to these two
3 charges and you're doing so without any specific
4 agreement with the State about what your sentence is
5 going to be?

6 DEFENDANT BULTHAUP: Yes, your Honor.

7 THE COURT: All right. And 14 CF -- let me ask
8 you this. How old are you?

9 DEFENDANT BULTHAUP: Fifty-nine, your Honor.

10 THE COURT: How far did you go in school?

11 DEFENDANT BULTHAUP: Four years of college.

12 THE COURT: Are you on any medications right
13 now?

14 DEFENDANT BULTHAUP: Yes.

15 THE COURT: What are you on?

16 DEFENDANT BULTHAUP: Clonazepam, Adderall and
17 prescription for Maxalt, too.

18 THE COURT: Did you take those medications
19 today?

20 DEFENDANT BULTHAUP: This morning, yes.

21 THE COURT: Is there anything about the
22 medications that is interfering with your ability to
23 understand what is being discussed in court today?

24 DEFENDANT BULTHAUP: I think I understand fine,

1 your Honor.

2 THE COURT: All right. Have you had enough time
3 with your attorney to discuss the cases?

4 DEFENDANT BULTHAUP: Yes.

5 THE COURT: Have you had a chance to review all
6 the discovery or talk about the discovery at least
7 with your attorney in the cases?

8 DEFENDANT BULTHAUP: Yes, your Honor.

9 THE COURT: Are you ready to proceed with the
10 plea?

11 DEFENDANT BULTHAUP: Yes, your Honor.

12 THE COURT: All right. In 14 CF 2165, the
13 charge, as I said, is financial institution fraud.
14 It states you committed that offense on or between
15 August 1st of 2011 through June 28th of 2013 in
16 DuPage County as stated in the indictment amended
17 Count 6 that has just been tendered to the Court. Do
18 you understand the charge?

19 DEFENDANT BULTHAUP: Yes, your Honor.

20 THE COURT: As charged, that is a Class 2
21 felony. That means it carries with it a possible
22 penalty of a term of conditional discharge or
23 probation for up to a period of four years at the
24 minimum end of the sentence, or between three and

1 seven years in the Illinois Department of Corrections
2 and a \$25,000 fine at the maximum end of the
3 sentence. That is the possible range of penalty for
4 the offense. Do you understand?

5 DEFENDANT BULTHAUP: Yes, your Honor.

6 THE COURT: Also, any penitentiary sentence if
7 one were to be imposed would also carry with it a
8 period of two years' mandatory supervised release,
9 what they used to call parole, that you would have to
10 be on after your penitentiary sentence was finished.
11 Do you understand that?

12 DEFENDANT BULTHAUP: Yes, your Honor.

13 THE COURT: In 14 CF 2166, the charge of sales
14 tax evasion states you committed that offense on or
15 between January 1st, 2013, through January 28th of
16 2014 in DuPage County in the manner that is listed
17 there in the amended Count 1 in the indictment. Do
18 you understand that charge?

19 DEFENDANT BULTHAUP: Yes, your Honor.

20 THE COURT: All right.

21 MS. TALBOTT: That charge carries with it a
22 possible penalty of a term of conditional discharge
23 or probation for up to a period of four years at the
24 minimum end of the sentence, or between four to

1 15 years in the Illinois Department of Corrections
2 and a \$25,000 fine at the maximum end of the
3 sentence. So that is the possible range of penalty
4 for that offense, do you understand?

5 DEFENDANT BULTHAUP: Yes, your Honor.

6 THE COURT: That would also carry with it a
7 period of two years mandatory supervised release that
8 you would have to serve after any penitentiary
9 sentence was finished. Do you understand?

10 DEFENDANT BULTHAUP: Yes, your Honor.

11 THE COURT: Any question about that range of
12 penalty?

13 DEFENDANT BULTHAUP: No, your Honor.

14 THE COURT: When you exercise your right to
15 plead guilty, you do give up the following rights:
16 You have a right to plead not guilty and have the
17 State prove you guilty of these offenses beyond a
18 reasonable doubt. Do you understand?

19 DEFENDANT BULTHAUP: Yes, your Honor.

20 THE COURT: You have a right to have a trial,
21 either a bench trial in which a Judge listens to the
22 evidence and decides if you're guilty or not guilty,
23 or a jury trial in which 12 citizens are chosen from
24 the community to listen to the evidence and decide if

1 you're guilty or not guilty. Do you understand?

2 DEFENDANT BULTHAUP: Yes, your Honor.

3 THE COURT: At either type of a trial that you
4 chose to have, you could testify for yourself if you
5 wanted to, you could ask questions of any State
6 witnesses, and you could subpoena people in to
7 testify in your behalf. Do you understand?

8 DEFENDANT BULTHAUP: Yes, your Honor.

9 THE COURT: By pleading guilty, you give up
10 those rights, there won't be a trial of any kind, and
11 the only thing left to do next is to impose the
12 sentence.

13 Have you read and did you understand this
14 waiver of trial by jury form that applies to each
15 case?

16 DEFENDANT BULTHAUP: Yes, your Honor.

17 THE COURT: Is that your signature on the
18 waiver?

19 DEFENDANT BULTHAUP: Yes it is, your Honor.

20 THE COURT: You understand, therefore, you are
21 waiving or giving up your right to have a trial by a
22 jury on the cases?

23 DEFENDANT BULTHAUP: Yes, your Honor.

24 THE COURT: Has anybody forced you, threatened

1 you, or promised you something to get you to plead
2 guilty?

3 MR. YOUNG: May I interject? Just what was
4 stated previously on the record, other than that.

5 DEFENDANT BULTHAUP: Not other than that.

6 THE COURT: Understanding the possible range of
7 penalties and the rights I just explained to you, how
8 do you wish to plead to the charge of financial
9 institution fraud, guilty or not guilty?

10 DEFENDANT BULTHAUP: Guilty.

11 THE COURT: How do you wish to plead to the
12 charge of sales tax evasion, guilty or not guilty?

13 DEFENDANT BULTHAUP: Guilty, your Honor.

14 THE COURT: Factual basis by the State.

15 MS. TALBOTT: Yes, your Honor, if the State were
16 to proceed to trial, the following witnesses would
17 include Illinois Department of Revenue Representative
18 Kenyatta Carr, Christopher Lytle, Auditor Pam Besler
19 and Forensic Analyst Rick Branham. They would
20 testify to a search warrant being executed on
21 defendant's two businesses, Hollywood Palms and
22 Hollywood Boulevard. And obtained during that search
23 warrant include different point of sale reports that
24 indicated that Hollywood Palms had actual -- had

1 unreported approximately \$17 million worth of sales
2 based on a comprehensive tax analyses that they
3 conducted.

4 Additionally, they would testify that
5 during the time period of the indictment, that the
6 defendant underreported sales tax of approximately
7 1.3 million during a four-year period and caused over
8 20 fraudulent tax returns to be filed with the
9 Illinois Department of Revenue.

10 The State would call Special Agent Tom
11 Heinzer of the Small Business Administration of the
12 Inspector General that during the relevant time
13 period, the defendant applied for and obtained an SBA
14 batch loan from First Community Financial Bank of
15 Plainfield, and to do so, he filed fraudulent
16 financial statements and tax returns submitted at the
17 direction of the defendant, which served to inflate
18 the -- his company -- the movie theater's income and
19 financial strengths.

20 The State would call Lou Severson, who is
21 defendant's bookkeeper, and she would testify that
22 she created fraudulent tax returns and interim
23 financial statements at the defendant's direction
24 during the time period alleged in the indictment.

1 The State would also call John F. Slade who
2 is the executive vice president of First Community
3 Financial Bank of Plainfield. Mr. Slade would
4 testify as to the materiality of the information
5 provided by the defendant including a loan analysis
6 that was done upon the Bank's relying on the tax
7 figures that defendant provided the bank, that the
8 loan proceeds were used -- were going to be used to
9 benefit the defendant's movie theater corporation.
10 And in reliance on the materials submitted, which
11 were falsified, the bank made a loan of 4.729 million
12 on February 13th, 2012, which was partially
13 guaranteed by the SBA and partially funded by the
14 Department of Commerce and Economic Opportunity.

15 And finally, that on June 28th, 2013, the
16 bank provided a projector loan of \$133,167.26 based
17 on the falsified tax returns that were provided by
18 the defendant.

19 Additional witnesses include a
20 representative from the Illinois Department of
21 Commerce and Economic Opportunity, Stanley Ludoff --
22 Luboff, excuse me, as to their policies and
23 procedures and that the review of defendant's
24 application for loan included defendant's fraudulent

1 tax returns.

2 Jeffrey McKee, who is an accountant, as to
3 the accuracy of the returns that he filed and that
4 the defendant altered those tax returns. And in
5 total, the evidence would be used to show that the
6 total economic harm from the defendant's schemes
7 resulted in a loss to the State and Federal
8 Government of over \$6 million and all of the alleged
9 activity occurred in DuPage County. Thank you.

10 MR. YOUNG: We would stipulate that the
11 witnesses that they would call would testify to that.

12 THE COURT: Okay. All right. I find the pleas
13 have been entered knowingly and voluntarily. There
14 is a factual basis for the charges. I make a finding
15 of guilty. I will set it over for sentencing.

16 MR. YOUNG: Yes.

17 THE COURT: We need a presentence report form
18 filled out. And then what date were the parties
19 looking at for sentencing?

20 MR. YOUNG: Would your Honor want us to choose a
21 sentencing date or an interim date then to schedule a
22 sentencing date? Ansh Vaidya, who is the Attorney
23 General on the case, we talked about an interim date
24 at first.

1 THE COURT: That's fine.

2 MR. YOUNG: So if we could go out maybe eight
3 weeks --

4 THE COURT: Okay.

5 MR. YOUNG: -- to allow that report. So that
6 would put us end of August?

7 THE COURT: Eight weeks would be -- oh, yeah.

8 MR. YOUNG: Could we say August 25 for the
9 interim date?

10 THE COURT: Okay.

11 MR. YOUNG: And do you want to choose a
12 sentencing date at this time?

13 THE COURT: Why don't we do it August 25th.

14 MR. YOUNG: August 25th?

15 THE COURT: For choosing the sentencing date.

16 MR. YOUNG: Oh, okay.

17 THE COURT: So we will go to August 25th for
18 return of the presentence report and for setting for
19 sentencing.

20 MR. YOUNG: Okay. And for setting, yes, yes.

21 Okay. Thank you, Judge.

22 MS. TALBOTT: Thank you, Judge.

23 MS. NICHOLSON: Thank you, Judge.

24 (which were all of the proceedings
had in the above-entitled matter.)

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF DU PAGE)

4
5 I, ANGELA M. MONTINI, do hereby certify that
6 the foregoing Report of Proceedings, consisting of
7 Pages 1 to 26, inclusive, was reported in shorthand by
8 me, and the said Report of Proceedings is a true,
9 correct and complete transcript of my shorthand notes
10 so taken at the time and place hereinabove set forth.

11
12
13
14
15 _____
16 Official Court Reporter
17 Certified Realtime Reporter
18 Eighteenth Judicial Circuit of Illinois
19 DuPage County
20 C.S.R. License No. 084-003716
21
22
23
24

STATE OF ILLINOIS

UNITED STATES OF AMERICA

COUNTY OF

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

People of the State of Illinois

-VS-

14CF2165
CASE NUMBER

FILED
16 NOV 10 PM 4:50
CLERK OF THE
18TH JUDICIAL CIRCUIT
DU PAGE COUNTY, ILLINOIS

09/25/2016
3000
253

Ted Edwin CRENS Burtman III

DEFENDANT

JUDGMENT - SENTENCE TO ILLINOIS DEPARTMENT OF CORRECTIONS

Date of Sentence 11/10/2016 Date of Birth 06/01/57 Victim's Date of Birth NA

WHEREAS the above-named defendant has been adjudged guilty of the offenses enumerated below.

IT IS THEREFORE ORDERED that the defendant be and hereby is sentenced to confinement in the Illinois Department of Corrections for the term of years and months specified for each offense.

COUNT	OFFENSE	DATE OF OFFENSE	STATUTORY CITATION	CERTIFICATION
10	Financial Institution Fraud	9/2/2011 - 6/28/2013	720 ILCS 5/5-5-3(c)(8)	Chris Kachirobas, Clerk of the 18th Judicial Circuit Court, DuPage County, Illinois, do hereby certify this to be a true and correct copy as it appears from the records and files in my office. I have hereunto set my hand and caused to be affixed the Seal of the said Court, on: <u>JUN 27 2019</u>

and said sentence shall run (concurrent with)(consecutive to) the sentence imposed on _____ and said sentence shall run (concurrent with)(consecutive to) the sentence imposed on _____



Yrs. Chris Kachirobas Mos. Chris Kachirobas Yrs. Chris Kachirobas
CHRIS KACHIROBAS, Clerk
Yrs. Michelle [Signature] Deputy Clerk

The Court finds that the defendant is:

- Convicted of a class _____ offense but sentenced as a class X offense pursuant to 730 ILCS 5/5-5-3(c)(8). The Court further finds that the defendant is entitled to receive credit for time actually served in custody (of 8 days as of the date of this order) from (specify dates) _____.
- The Court further finds that the conduct leading to conviction for the offenses enumerated in counts _____ resulted in great bodily harm to the victim. (730 ILCS 5/3-6-3(a)(iii)).
- The Court further finds that the defendant meets the eligibility requirements and is approved for placement in the impact incarceration program. If the Department accepts the defendant and determines that the defendant has successfully completed the program, the sentence shall be reduced to time considered served upon certification to the Court by the Department that the defendant has successfully completed the program. **Written consent is attached.**
- The court further finds that offense was committed as a result of the use of, abuse of, or addiction to alcohol or a controlled substance.
- IS FURTHER ORDERED that the sentence(s) imposed on count(s) 1 be (concurrent with) (consecutive to) the sentence imposed in case number 14CF2166 in the Circuit Court of DuPage County.
- IT IS FURTHER ORDERED that the defendant serve 85 % 100 % of said sentence.
- IT IS FURTHER ORDERED that the Clerk of the Court deliver a certified copy of this order to the Sheriff.
- IT IS FURTHER ORDERED that the Sheriff take the defendant into custody and deliver him/her to the Department of Corrections which shall confine said defendant until expiration of his/her sentence or until he/she is otherwise released by operation of law.
- IT IS FURTHER ORDERED that See Judgment of Restitution Order

This order is (X) effective immediately, () stayed until _____

DATE: 11/10/2016

ENTER 11-10-16

JUDGE [Signature]

(PLEASE PRINT JUDGE'S NAME HERE)



STATE OF ILLINOIS UNITED STATES OF AMERICA COUNTY OF _____
IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

1130
4360
4365
4300
3020
2250

People of the State of Illinois

-VS-

14CF2166
CASE NUMBER

FILED
16 NOV 10 PM 4:50
CLERK OF THE
18TH JUDICIAL CIRCUIT
DU PAGE COUNTY ILLINOIS

Edwin Charles Bultman III
DEFENDANT

JUDGMENT - SENTENCE TO ILLINOIS DEPARTMENT OF CORRECTIONS

Date of Sentence 11/10/2016 Date of Birth 06/01/57 Victim's Date of Birth NA

WHEREAS the above-named defendant has been adjudged guilty of the offenses enumerated below.


IT IS THEREFORE ORDERED that the defendant be and hereby is sentenced to confinement in the Illinois Department of Corrections for the term of years and months specified for each offense.

COUNT	OFFENSE	DATE OF OFFENSE	STATUTORY CITATION
<u>1</u>	<u>Sales Tax Evasion</u>	<u>1/1/2013-1/28/2014</u>	<u>35 ILCS 120/13(a)</u>

CERTIFICATION
I, Chris Kachirobas, Clerk of the 18th Judicial Circuit Court, Dupage County, Illinois, do hereby certify this to be a true and correct copy as it appears from the records and files in my office. IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Seal of the said Court.

CLASS A SENTENCE 5 Yrs. 2 Mos. 2 Yrs.
DATE JUN 27 2019

Chris Kachirobas
Yrs. CHRIS KACHIROBAS, Clerk
By [Signature]
Deputy Clerk
Yrs. ____ Mos. ____ Yrs. ____



and said sentence shall run (concurrent with)(consecutive to) the sentence imposed on:

and said sentence shall run (concurrent with)(consecutive to) the sentence imposed on:

The Court finds that the defendant is:

- Convicted of a class _____ offense but sentenced as a class X offender pursuant to 730 ILCS 5/5-5-3(c) (8). The Court further finds that the defendant is entitled to receive credit for time actually served in custody (of 8 days as of the date of this order) from (specify dates) _____.
- The Court further finds that the conduct leading to conviction for the offenses enumerated in counts _____ resulted in great bodily harm to the victim. (730 ILCS 5/3-6-3(a)(iii)).
- The Court further finds that the defendant meets the eligibility requirements and is approved for placement in the impact incarceration program. If the Department accepts the defendant and determines that the defendant has successfully completed the program, the sentence shall be reduced to time considered served upon certification to the Court by the Department that the defendant has successfully completed the program. Written consent is attached.
- The court further finds that offense was committed as a result of the use of, abuse of, or addiction to alcohol or a controlled substance.
- IS FURTHER ORDERED that the sentence(s) imposed on count(s) 6 be (concurrent with) (consecutive to) the sentence imposed in case number 14CF2165 in the Circuit Court of DuPage County.
- IT IS FURTHER ORDERED that the defendant serve 85% 100% of said sentence.
- IT IS FURTHER ORDERED that the Clerk of the Court deliver a certified copy of this order to the Sheriff.
- IT IS FURTHER ORDERED that the Sheriff take the defendant into custody and deliver him/her to the Department of Corrections which shall confine said defendant until expiration of his/her sentence or until he/she is otherwise released by operation of law.
- IT IS FURTHER ORDERED that See Judgment of Restitution Order

This order is (X) effective immediately, () stayed until _____

DATE: 11/10/2016

ENTER [Signature]

JUDGE _____
(PLEASE PRINT JUDGE'S NAME HERE)

HECOWD HHHHNDHD

1 IN THE CIRCUIT COURT OF DU PAGE COUNTY
2 FOR THE EIGHTEENTH JUDICIAL CIRCUIT OF ILLINOIS

3
4 FOR THE PEOPLE OF THE)
5 STATE OF ILLINOIS,)

6)
7 Plaintiff,)

8)
9 -vs-) No. 14 CF 2165

10) No. 14 CF 2166

11 TED EDWIN BULTHAUP, III)

12)
13 Defendant.)

14)
15 EXCERPT REPORT OF PROCEEDINGS had and testimony
16 taken of the above-entitled cause, before the Honorable
17 DANIEL P. GUERIN, Judge of said Court, commencing on
the 10th day of November, 2016.

18 PRESENT:

19 MS. LISA MADIGAN,
Attorney General, State of Illinois, by
20 MR. JOHN R. GREENWOOD, Assistant State's Attorney,
MR. ANSHUMAN VAIDYA, Assistant State's Attorney,
MS. SANDRA TALBOTT, Assistant State's Attorney,
appeared on behalf of the People of
the State of Illinois;

21 MR. MICHAEL YOUNG,
appeared on behalf of the Defendant.

22 DEFENDANT NAME

23 Shannon Mason, CSR,
License No. 084-004369.
24 Official Court Reporter Circuit Court of the 18th
Judicial Circuit County of DuPage

1 (WHEREUPON, certain proceedings
2 were had that were not
3 herein transcribed.)

4 THE COURT: All right. I want to thank each side
5 for your presentation here today to clarify everything
6 for me, and appreciate your professionalism from each
7 side.

8 I have reviewed various matters here, the
9 facts of and the circumstances of the offenses. I have
10 reviewed the evidence that was presented in aggravation
11 and mitigation, all witnesses' testimony and the
12 physical evidence that was submitted to me.

13 I have reviewed the statutory factors in
14 aggravation and mitigation, which I am familiar with
15 and have read through again, and have been argued. Of
16 course, I looked at the presentence report, the case
17 law that I'm familiar with on sentencing, which in
18 summary indicates that in determining an appropriate
19 sentence, the Court is to consider the nature of the
20 crime, the protection of the public, deterrence,
21 punishment and a defendant's rehabilitative potential
22 among other factors. So I've considered those matters
23 as well.

24 The statutes involved I have reviewed, one of

1 which is the statute on probation, which indicates that
2 the Court is to sentence someone to probation, unless
3 given the nature and circumstances of the offense and
4 the history, character and condition of the offender,
5 the Court is of the opinion that imprisonment is
6 necessary for the protection of the public or that
7 probation would deprecate the seriousness of the
8 offender's conduct and it would be inconsistent with
9 the ends of justice. So I have got that statute in
10 mind as well, and I've been going through and weighing
11 things.

12 I've considered obviously the arguments from
13 both sides, I've considered the defendant's statement
14 in allocution that he just made as well.

15 Just regarding the facts and circumstances of
16 the offenses, of course, there is the charges in the
17 indictments, the defendant having pled guilty to one
18 count of each of the sales tax evasion and the
19 financial institution fraud, and so the one indictment
20 indicating the time period from 2013 through 2014 and
21 the other 2011 through 2013, I believe it is, but
22 obviously, the State has introduced other crimes
23 evidence in aggravation to establish offenses, and I do
24 believe they have established evidence that I consider

1 relevant and reliable of other crime's evidence, which
2 tends to show these offenses ranging from 2005 through
3 2013, conservatively speaking.

4 I have asked the State, particularly with
5 some of these numbers because I reviewed the numbers in
6 the presentence report, we've gone over numbers back
7 and forth, but in essence, as the State pointed out,
8 and I agree with these numbers ultimately that the
9 State has provided with the offsets that were talked
10 about, but it's clear from the tax fraud and the
11 financial institution fraud that what the Court is
12 dealing with is a fraud of over \$3 million, when you
13 add those two together,
14 three-million-two-hundred-eighty-something-thousand
15 dollars.

16 So that is essentially what is confronting
17 the Court with all the evidence that has been
18 presented. And it's over not a one-time situation or
19 once or twice, or a bad couple of months, but it's a
20 crime that occurred through several years ongoing, over
21 and over again that had to be continually repeated in
22 order to get up to that level of \$3 million.

23 So those are basically the facts and
24 circumstances of these offenses. The tax -- sales tax

1 fraud, of course, fraud to the State of Illinois, to
2 the public treasury, not contributing that, some two
3 and a half million dollars, or \$2.4 million, and then
4 the other to the financial institutes for the loans.

5 There are, of course, I've considered the
6 statutory factors in aggravation and mitigation. I
7 essentially agree with ultimately the defense argument
8 that while there may be some other statutory factors in
9 aggravation, I understand the attorney general's
10 presentation on that, really the one that stands out to
11 me is that the sentence is necessary to deter others
12 from committing the same crime or similar crime.

13 When it boils down to it, that's the one that
14 struck me the most, and the reason for that is somewhat
15 obvious, but thousands of -- I would imagine, I think
16 it's safe to say, thousands of DuPage County residents,
17 citizens, face extremely difficult financial
18 circumstances at some point or another during their
19 lives, and both business owners and business debts and
20 personal debts and personal financial situations they
21 get themselves into, and I think it's safe to say that
22 those citizens, most of them, find ways to honestly and
23 ethically tackle the difficulties.

24 And the steps are painful, both financially,

1 emotionally, sometimes socially, legally. But there
2 are people out there, and the vast majority, that pay
3 the taxes and then honestly obtain loans, if they have
4 to, but they go about it following the rules. And,
5 Mr. Bulthaup, unfortunately, you chose to undertake
6 dishonest and deceptive and fraudulent and ultimately
7 illegal actions to address your particular financial
8 problems. And as I said, not just one time but
9 repeatedly over many years.

10 So you deprived essentially the public
11 treasury of revenue and you defrauded these financial
12 institutions. So this sentence, among other things,
13 has to reflect the seriousness of that violation and
14 the breach of trust that that involved. I think the
15 sentence has to show that fraud and deceit and
16 dishonesty cannot be met with indifference or excessive
17 leniency.

18 The statutory factors in mitigation are,
19 quite frankly, Mr. Young here, the defense is right on
20 most of those, because it's somewhat of a case in which
21 there are a lot of factors in mitigation.

22 And I won't go through each and every one of
23 them, but certainly one that I often deal with that's
24 not present here is defendant has a history of criminal

1 activity or -- you know, he really doesn't.

2 There's an entry on there, but there's
3 nothing of any significance at this point that I would
4 weigh as aggravating. He has led a law-abiding life
5 for a substantial period of time before this occurred.

6 So there are many factors in mitigation for
7 the Court to consider here, and just generally, under
8 the factors of character and attitude and whether the
9 defendant is likely to commit another crime, those
10 types of factors in mitigation, you know, it seems to
11 me by most accounts that the defendant is essentially a
12 kind-hearted person who enjoyed helping other people.

13 I think that's come across to me as
14 essentially who he is; certainly a creative man. But I
15 heard and I saw in this mitigation binder that was
16 presented to me all the way back to high school, and
17 we've heard from the witnesses from high school, which
18 is somewhat unusual at this stage of life to have
19 people come in and still remember the effect somebody
20 had on them in high school that Mr. Bulthaup has had
21 that basically brought a lot of joy to people at that
22 time.

23 And we've heard about, you know, the Styx
24 group performing and the floats and the other things

1 that he did. But you know, that's just one example
2 early on in his life that he showed that he is a pretty
3 good person. This whole situation with the Munchkins
4 is certainly something I've never heard before and I've
5 been sitting up here for a long time as a judge, but
6 he's in a unique field here with entertainment and
7 things.

8 So I read through that and the binder, and
9 there's actually letters from some of those people that
10 were in the movie, thanking him for getting them
11 recognition after all these years and getting them
12 their star. And it's a nice story, and certainly it's
13 something most people would never have thought about or
14 done anything about, and so, I mean, it's another
15 example of what I'm saying.

16 His businesses themselves are businesses that
17 are designed to bring enjoyment to people, with movies
18 and dinner and his whole concept there.

19 His family, and what's been testified about
20 how he's helped his family, I was particularly struck
21 regarding this area by, I guess, it's Tab 4 in this
22 book, when you get to his charitable activities, you
23 really over the years did a lot for people in Easter
24 Seals and the Michael J. Fox Foundation, for multiple

1 sclerosis, for Toys for Tots, for food drives.

2 There are all sorts of examples in here. And
3 arranging for some of the Munchkins that were in the
4 movie to go to children's hospitals to visit the kids
5 in the hospital. You know, those are things the Court
6 has to take note of, and I have, in mitigation.

7 I also think under these factors in
8 mitigation that it appears that, sir, that you are an
9 intelligent person, and certainly an accomplished
10 person.

11 Again, those awards that you earned all the
12 way back in high school, national awards, international
13 awards in science, things that most people don't get,
14 aren't capable of achieving. You're an entrepreneur
15 that ran into a lot of tough circumstances from time to
16 time. Certainly you were successful at other times,
17 active civic -- in the civics area, like I just went
18 through.

19 So those are attributes that I find to be
20 mitigating here. You know, it's tough to know exactly.
21 The State has painted a picture of defendant as more of
22 a sophisticated schemer, in this time period certainly
23 at least, and it's not an unreasonable argument based
24 on the evidence, based on the number of years that this

1 went on, based on the, as the State pointed out, you'd
2 have to overestimate your earnings, I think it was by
3 \$18 million, in order to get some of those loans.

4 You're getting these loans from major
5 financial institutions. You know, you can't be a
6 simpleton and pull that kind of thing off. You have to
7 know what you're doing.

8 So I understand their argument. On the other
9 hand, you know, I don't know, you seem at times like
10 more of a simple person to me and naive in the ways of
11 a lot of things maybe business-wise.

12 It seems like you started to spin a web to
13 try to catch various -- various things to help you out
14 with your business and you ended up catching yourself
15 in the web, and I think you're kind of a mixture of
16 both, I guess. But I don't think that you're an
17 essentially deceitful or dishonest person, but your
18 acts and your decision certainly through this period of
19 time that the State has proven were deceitful and
20 dishonest, and that's what I'm dealing with at this
21 point.

22 I think the evidence has shown that you're
23 remorseful. I think it's on page four of the
24 presentence report and on page six and in your

1 statement of allocution. I can tell that the effect
2 that this whole thing has had on you. On page four you
3 wrote, What I did was completely wrong, I let down my
4 family, my investors, my employees and my friends. I
5 have violated the trust and respect of all the people
6 that knew me best and have trusted and respected me the
7 most.

8 Page six in the presentence report you wrote
9 very clearly that I chose the wrong solutions, I made
10 more than just a mistake, I used incredibly bad
11 judgment, everything was my responsibility and I failed
12 that responsibility to everyone. I was wrong.

13 And I've taken note, of course, you have pled
14 guilty to the crimes. So I don't doubt your remorse
15 for what occurred. There's been some restitution
16 effort. I understand some of it is through the
17 bankruptcy proceedings and what have you. But some
18 money has been paid back, certainly not nearly what is
19 owed, but something has been attempted to be paid back.

20 And I acknowledge and I understand the
21 consequences you've already suffered. You're
22 unemployed, your house is foreclosed, your vehicle is
23 repossessed, apparently, that's on page 12 of the
24 presentence report.

1 You're a convicted felon, your -- Mr. Muller
2 came in to testify that he may higher you, and maybe,
3 you know, hopefully some day he can, so you can make
4 money again. You've got friends, certainly, seems like
5 a lot of people who like you a lot and are willing to
6 help you out and hopefully that can come true, but I
7 understand the effect that all of this has had on you.

8 But it's also not -- it's not an effect as
9 emotional or direct, but it's had an effect on society
10 when you don't pay the taxes that everybody else is
11 paying, even though they don't like to do it either,
12 and you take out fraudulent loans and you get up to \$3
13 million worth of some sort of dishonesty or fraud.
14 That's not insignificant by any means.

15 It has been a difficult decision. I don't
16 think, Mr. Bulthaup, that you are a fraud as a person,
17 but your actions over the years were fraudulent clearly
18 and caused great economic harm.

19 I don't think you are a bad person at all,
20 but your choices and your decisions were very bad, and
21 I have to impose a penalty for essentially theft of
22 millions of dollars. I have to impose a penalty that's
23 commensurate with that crime.

24 I have considered everything, I have weighed

1 the aggravation and mitigation. I understand the
2 State's position of eight years. I'm not going to pose
3 eight years because I think there's enough mitigation
4 here that you don't have to do that much time, but I
5 think ultimately I've come to the decision that just
6 probation would deprecate the seriousness of the
7 conduct, and probation would be inconsistent with the
8 ends of justice when we're talking about this type of
9 theft.

10 So the sentence I'm going to impose, with
11 good behavior you get day for day off of it, so that
12 should be noted, but for the sales tax evasion that
13 hurt the State of Illinois by not putting the money
14 into the public treasury or the State of Illinois, I
15 have to impose a period of five years in the Illinois
16 Department of Corrections, with credit for any time you
17 already actually served.

18 There is a two-year period of mandatory
19 supervised release that you'll have to be on after the
20 five-year sentence is completed.

21 For the bank institution fraud, it will be
22 four years Illinois Department of Corrections,
23 concurrent. I believe that one also carries with it a
24 two years' mandatory supervised release period that

1 will follow that penitentiary sentence, but it runs
2 concurrent with the other count; zero fines, court
3 costs only.

4 I will enter the judgments that have been
5 requested. I don't know if there's any other mandatory
6 fines or fees by statute, but if there are, let me know
7 now. I don't think there are, but --

8 MR. VAIDYA: I don't think there are, not that
9 we're aware of, Judge.

10 THE COURT: All right. Sir, now, you do have a
11 right to appeal. Prior to taking an appeal, you must
12 file in this trial court within 30 days of today's date
13 a written motion, asking the trial Court to reconsider
14 the sentence I just imposed or asking to have the
15 judgment vacated and leave to withdraw your plea of
16 guilty. And you would have to set forth in that
17 written motion all the grounds or the reasons for the
18 motion, and you could file a written motion asking for
19 both those things if you so chose.

20 If you did file that written motion and I
21 granted your motion, your sentence would be modified in
22 some manner, if that's the request you had made, or
23 your plea of guilty, sentence and judgment would be
24 vacated, if that's the request you had made, and a

1 trial date would be set on the charges you pled guilty
2 to.

3 Upon request of the State, any charges that
4 were dismissed as part of this plea would be reinstated
5 and set for trial as well.

6 If you were indigent, a copy of the
7 transcript of your plea and sentence would be provided
8 to you for free, and an attorney would be appointed to
9 assist you in preparing any written motion.

10 Now, if you filed that written motion, but I
11 denied it, then you would have 30 days from that date
12 of denial to file any formal written notice of appeal.

13 And finally, in any appeal that you may
14 ultimately take from this judgment on this plea of
15 guilty, any issue or claim of error that you don't put
16 into that written motion I just described would be
17 deemed waived for purposes of any future appeal.

18 Is there anything else from the State?

19 MR. VAIDYA: No, Your Honor.

20 THE COURT: Anything else from the defendant?

21 MR. YOUNG: Your Honor, there is an issue as to
22 bond. I'm requesting that Mr. Bulthaup's --
23 Mr. Bulthaup is requesting that his bond be refunded to
24 his attorney -- that his bond is refunded to his

1 attorney for services.

2 THE COURT: Is that what you want, sir?

3 THE DEFENDANT: (No audible response.)

4 THE COURT: So ordered.

5 MR. YOUNG: Thank you.

6 (WHICH WERE ALL THE PROCEEDINGS HAD
7 IN THE ABOVE-ENTITLED CAUSE ON
8 THIS DATE.)

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1 STATE OF ILLINOIS)
2) SS
3 COUNTY OF DU PAGE)

4 I HEREBY CERTIFY that I reported in shorthand the
5 proceedings had at the hearing of the above-entitled
6 cause, and that the partial Report of Proceedings,
7 consisting of Pages 1 to 17, inclusive, is a true,
8 correct and complete transcript of my shorthand notes
9 so taken at the time and place hereinabove set forth.
10

11 Shannon Mason

12
13 Official Court Reporter

14 Shannon Mason, CSR, Lic. No. 084-004369

15 Eighteenth Judicial Circuit of Illinois,

16 DuPage County
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